

**In the High Court of Uttaranchal, at Nainital.
A.O. No. 19 of 2001**

- 1- Smt. Ram Payari W/o Late Jai Singh
 - 2- Km. Mamta D/o Late Jai Singh,
 - 3- Km. Rinki D/o Late Jai Singh,
 - 4- Master Krishna S/o Late Jai Singh,
 - 5- Amar Singh S/o Late Bhopal Singh,
 - 6- Smt. Pavitra Devi W/o Amar Singh,
- The appellant Nos. 2 to 4 are minors and being represented through their natural guardian and mother Smt. Ram Payri

All R/o Village Garhthali Patti Gajana
Tehsil Dunda, District Uttarkashi Appellants.

Versus

- 1- Rajesh S/o Ansari
R/o 4014/120A Tukaj Bagar
New Delhi at present C/o Vijaipal Singh
Bisht Bhawan Gyanshu P.O. Gyansu
District Uttarkashi.
- 2- The New India Assurance Company Ltd.
Branch New Delhi through its Branch
Manager, the New India Assurance Company
Ltd. Office New Delhi Fifth Floor
Arunchal Bhawan 19, Barakhamba
Road New Delhi ... Respondents.

Sri G.B. Pandey, Advocate for the Appellants.
Sri R.B. Agarwal, learned counsel for the respondents.

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.**

Dated: 15th May, 2006.

The present Appeal from Order, U/S 173 of the Motor Vehicle Act, has been filed against the judgment and order dated 22-12-2000, passed by M.A.C.T./District Judge, Uttarakashi, in M.A.C.P. No. 1/1999 Smt. Ram Pyari and others versus Rajesh and another, by which the claim petition of the claimants/appellants was dismissed.

2- Brief facts giving rise to the appeal are that on 21/22-11-1998, Jai Singh was going Lamb Gaon from Rishikesh in Commander Taxi No. D.L.-4 C.F.-9054 and when the Taxi reached in between Gadugaad and Bhaldiyana on Uttarkashi-

Bhaldiyana Motor Raod, it fell in a Khud down the road. The Taxi was being driven by Rajesh. It was alleged that the accident took place due to rash and negligent driving of the driver. Due to the accident Jai Singh died at the spot. The deceased Jai Singh at the time of accident was aged about 24 years. According the claimants the deceased was doing the work of Raj Mistri and was earning Rs. 4,500/- per month. The claimants are the dependents of the deceased hence they claimed a sum of Rs. 17,76,000/- as compensation in lieu of death of Jai Singh.

3- The O.P./respondent No.1 is the owner-cum-driver of the offending taxi. He has contested the claim petition by filing the written statement. It was alleged by him that the accident occurred due to sudden mechanical defect in the taxi. He was driving the taxi very cautiously. He also alleged that the offending taxi was insured with O.P./respondent No.2.

4- The O.P./respondent No.2, New India Assurance Company, filed its W.S. pleading therein that the accident did not occur due to rash and negligent driving of the vehicle but it occur due to sudden mechanical defect. It was also alleged that the driver was not having a valid driving licence at the time of the accident. However the insurance of the offending taxi was not denied.

5- On the pleading of parties, the Tribunal framed the following issued:-

1- Whether on 21/22-11-1998 at Gadugaad, District Tehri Garhwal, Jai Singh had died in a motor accident which had occurred by rash and negligent driving of the driver of Jeep No. D.L.-4-C.F. 9045?.

2- Whether the driver of the offending taxi was not having a valid driving licence? If so, its effect?.

3- To what amount of compensation the claimants are entitled to get and against whom?.

6- The claimants/appellants in support of their claim examined P.W.1, Smt. Ram Payari and P.W.2, Jagdish Singh and also filed the inquest report, post mortem report of the deceased Jai Singh, registration and copy of insurance policy of the offending taxi. The owner/driver of the taxi filed copy for permit, insurance policy

and copy of driving licence. The insurer also examined D.W.1, Pradeep Ghai, Branch Manager of the Insurance Company in support of its case.

8- The Tribunal on assessment of the evidence on record decided the issue No.1 against the claimants/appellants. On issue No.2 the Tribunal gave finding that the vehicle was insured in the capacity of private vehicle. It was not insured for third party insurance and the vehicle was being plied against the terms and conditions of insurance policy. Therefore, the Tribunal dismissed the claim petition.

7- Feeling aggrieved, the claimants/appellants have filed the present appeal before this Court.

8- We have heard the learned counsel for the parties and perused the record.

9- As far as the finding with regard to the issue 'as to whether the offending vehicle was being driven rashly and negligently at the time of accident and on account of this accident Jai Singh sustained injuries and he died at the spot', is concerned, the Tribunal has recorded a categorical finding that after proper assessment of the evidence on record the offending vehicle was being driven rashly and negligently at the time of the accident and on account of the same it fell in a Khad due to which Jai Singh died at the spot. It has been pleaded in the written statement that the accident occurred on account of the mechanical defect but no evidence has been led by the Opposite Parties in this regard while there is a specific evidence adduced by the claimants/appellants to the effect that the vehicle in question was being driven rashly and negligently by its driver at the time of the accident.

10- The another point involved in this case is 'as to whether the Insurance Company is liable to make the payment of the compensation or not'. The Tribunal has recorded a finding that as the vehicle in question was insured in the capacity of a private jeep and there was no third party insurance with regard to the offending jeep, therefore, the insurance policy does not cover gratuitous passenger and accordingly the Insurance Company is not liable to

pay the amount of compensation. The Tribunal has dismissed the petition on this ground.

11- The Hon'ble Apex Court in a case **New India Assurance Co. Ltd. Vs. Asha Rani** reported in **(2003) 2 SCC page 223** has held that the Insurance Company is not liable for payment of compensation for the death of a gratuitous passenger travelling in a goods vehicle. The aforesaid ruling was followed in another case in **Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy** reported in **(2003) 2 SCC 339**. Again the said view was upheld in the case of **National Insurance Co. Ltd. Vs. Ajit Kumar** reported in **(2003) 9 SCC page 668**.

12- The question again came up for consideration before the three-Judge Bench of the Apex Court in **National Insurance Co. Ltd. Vs. Baljit Kaur** reported in **(2004) 2 SCC page-1**, in which the fact of amendment carried out in Section 147 of the Motor Vehicle Act by the Motor Vehicles (Amendment) Act, 1994 was considered and it was opined in the aforesaid judgment as under:-

“17. By reason of the 1994 amendment what was added is ‘including owner of the goods or his authorized representative carried in the vehicle.’ The liability of the owner of the vehicle to insure it compulsorily, thus by reason of the aforementioned amendment included only the owner of the goods or his authorized representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words ‘any person’ occurring in Section 147 would cover all persons who were traveling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the expression ‘any person’ contained in sub-clause (i) of clause (b) of sub-section (1) of Section 147 would have included the owner of the goods or his authorized representative besides the passengers who are gratuitous or otherwise.”

13- In view of the aforesaid decision it is clear that it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance

was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

14- The Hon'ble Apex Court again in **National Insurance Co. Ltd. Vs. Swaroopa and others** reported in **(2005) 11 Supreme Court Cases 419** has ruled that the Insurance Company would not be liable to pay compensation in respect of a gratuitous passenger being carried in a goods vehicle if the vehicle meets with an accident.

15- In view of the aforesaid judicial pronouncements made by the Hon'ble Apex Court, we are of the view that the judgment and order passed by the Tribunal does not suffer with any sort of infirmity. The Tribunal has rightly concluded that the Insurance Company is not liable for compensation in this case.

16- It is however to be made clear that the owner of the offending vehicle has been arrayed as O.P.No.1 in the claim petition and he has filed the written statement in the claim petition before the Tribunal. The finding recorded by the Tribunal to this effect that the owner of the vehicle has died in this accident appears to be absolutely wrong and against the record. In case if the owner of the vehicle had died in this accident then how the written statement on behalf of the opposite party No.1 (owner of the vehicle) has been filed before the Tribunal and is available on the record of the case. The Tribunal has completely ignored this aspect of the matter.

17- In case if the Insurance Company is not found liable to pay the amount of compensation then certainly it is the liability of the insured, who is the owner of the offending vehicle. The Tribunal has not recorded any finding to this effect and has dismissed the claim petition without looking into the material available on record. The Tribunal would have imposed the liability for making the payment on the shoulder of the respondent No.1 who is the owner of the vehicle.

18- In the light of the observation made above, we are of the definite opinion that the judgment and order passed by the Tribunal is perverse and against the evidence on record.

19- We accordingly set aside the impugned judgment and order dated 22-12-2000 passed by the M.A.C.T./District Judge, Uttarkashi, by which the claim petition has been dismissed. We direct the Tribunal to decide the claim petition afresh in the light of the material available on record in order to fix the liability against the respondent.

20- Accordingly the appeal is allowed. The impugned judgment and order dated 22.12-2000 passed by M.A.C.T./ District Judge, Uttarkashi in M.A.C.P. No. 1/1999 is set aside. As the claim petition is quite old, hence the Tribunal is directed to decided the claim petition within a period of three months in accordance with law and on the basis of the strength of evidence available on record as well as in the light of the observations made by this Court.

21- Let the record of the case, immediately be sent back to Motor Accident Claim Tribunal concerned.

(B.C. Kandpal, J.)

(P.C. Verma, J.)